

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILLIAM LILLEY,

Plaintiff,

vs.

Civ. No. 17-515 KG/JHR

CVS HEALTH, CVS PHARMACY,
and JOHN DOES 1-4,

Defendants.

PARTIAL ORDER OF DISMISSAL

This matter comes before the Court upon its Order to Show Cause, filed March 13, 2019, and Plaintiff's timely response to the Order to Show Cause, filed March 22, 2019. (Docs. 82 and 84). Having reviewed Plaintiff's response, the Court quashes the Order to Show Cause in part.

In the Order to Show Cause, the Court noted that Plaintiff had made no attempt to serve Defendants CVS Health, CVS Caremark, or John Does 1-4. (Doc. 82). To avoid dismissal without prejudice under Fed. R. Civ. P. 4(m), the Court ordered Plaintiff, within ten days of the entry of the Order to Show Cause, to "either effect service on those Defendants or show good cause why he cannot effect service within that time." (Doc. 82).


In response to the Order to Show Cause, Plaintiff served Defendant CVS Health on March 20, 2019, within the ten-day period allowed by the Court. (Doc. 84) at 3. Plaintiff then voluntarily dismissed Defendant CVS Caremark without prejudice on March 21, 2019, also with the ten-day period. (Doc. 83).

Plaintiff, however, did not name the John Does, let alone serve them, because neither he nor the Albuquerque Police Department knows who shot Plaintiff in the CVS store parking lot.

Doc. 84) at 2. The Court observes that Plaintiff brings the Complaint for Money Damages (Complaint) against all Defendants, including the John Does, “for their failures to have adequate security at their locations located in Albuquerque, NM.” (Doc. 1-1) at 1. In fact, Plaintiff alleges in the Complaint that John Doe 1 is the local manager of the CVS store at issue in this lawsuit, not the shooter. *Id.* at ¶ 5. Plaintiff also alleges that the remaining John Does, along with the other co-Defendants, “collectively failed to protect business visitors, including Plaintiff Will Lilley, at the Location from harm on May 2, 2014....” *Id.* at ¶ 6. A plain reading of the Complaint reveals that the John Does do not include the shooter. Plaintiff, therefore, has failed to provide good cause for not naming those John Does and serving them. Consequently, the Court dismisses Plaintiff’s claims against the John Does without prejudice.

IT IS ORDERED that

1. the Order to Show Cause (Doc. 82) is quashed with respect to Plaintiff’s previous failure to serve Defendants CVS Health and CVS Caremark;
2. Plaintiff failed to comply with the Order to Show Cause with respect to his failure to serve the John Does;
3. Plaintiff’s lawsuit is dismissed without prejudice as to the John Does.



UNITED STATES DISTRICT JUDGE